

GAHC010073292024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2040/2024

MD. TOIBUR RAHMAN
S/O- LATE FAIZUR RAHMAN,
R/O- VILL- PHUKANTUL, NEAR SAMAGURI POLICE STATION,
P.O. AND P.S.- SAMAGURI, DIST.- NAGAON, ASSAM, PINCODE- 782140.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY- THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORKS (ROADS) DEPARTMENT,
ASSAM SECRETARIAT, DISPUR, GUWAHATI,
ASSAM. PINCODE- 781006.

2:THE UNDER SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS (ROADS) DEPARTMENT
ESTABLISHMENT BRANCH DISPUR GUWAHATI ASSAM PINCODE- 781006.

3:THE CHIEF ENGINEER PUBLIC WORKS (ROADS) DEPARTMENT
CHANDMARI GUWAHATI ASSAM PINCODE- 781003.

4:THE EXECUTIVE ENGINEER PUBLIC WORKS (ROADS) DEPARTMENT
NAGAON EAST DIVISION NAGAON ASSAM PINCODE- 782001.

5:THE EXECUTIVE ENGINEER PUBLIC WORKS (ROADS) DEPARTMENT
NAGAON- BATADROBA RAHA AND BARHAMPUR TERRITORIAL ROAD
DIVISION NAGAON ASSAM PINCODE- 782001.

6:THE FINANCE DEPARTMENT GOVT. OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE DISPUR ASSAM PINCODE- 781006

Advocate for the Petitioner : MR. FIRUZ KHAN, MS LITO AWOMI,K. SUMI,P. NATH,Q.
KIBA,DR AZIZ KHAN,MR. ABHIJIT MENA,MR U CHAUDHURY

Advocate for the Respondent : SC, PWD, SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 31.07.2024

Heard Dr. Aziz Khan, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned standing counsel, Finance Department, appearing on behalf of the State respondents.

2. The petitioner by way of instituting the present proceeding, has raised a grievance with regard to his appointment on compassionate ground against a Work-Charged post and his continuance in such capacity without regularizing his service against an equivalent regular post.

3. The father of the petitioner, herein, Faizur Rahman, while serving as a Section Assistant in the establishment of the Executive Engineer, Public Works(Road) Department, Nagaon, East Division, had died-in-harness on 24.10.1992.

4. The petitioner, thereafter, submitted an application before the respondent authorities, praying for his appointment on compassionate ground. The said application on being so processed; the competent authority, vide communication, dated 12.04.1993, approved the appointment of the petitioner on compassionate ground and the Chief Engineer, Public Works(Road) Department, Assam, was directed to take requisite steps in the matter. In terms of the approval as granted for the appointment of the petitioner on compassionate ground; the Executive

Engineer, Public Works(Road) Department, Nagaon, East Division, vide an order, dated 29.06.1993, proceeded to appoint the petitioner on compassionate ground as a Work-Charged Section Assistant for a period of 3(three) months. Thereafter, vide order, dated 24.08.1994, the period of appointment of the petitioner was modified and such appointment was extended until further order.

5. As has been stated in the Bar, the petitioner, herein, is still continuing to discharge his duties as a Work-Charged Section Assistant in the establishment of respondent No. 4. The petitioner had approached the respondent authorities for his regularization against a vacant sanctioned post. However, the respondent authorities having not acceded to the prayers made by the petitioner from time to time for his appointment against a regular sanctioned post; the petitioner, being aggrieved, has instituted the present proceeding.

6. Dr. Khan, learned counsel for the petitioner, has reiterated the facts as noticed hereinabove and has prayed for a direction to the respondent authorities for accommodation of the petitioner, herein, against a vacant sanctioned post.

7. The respondent authorities have filed an affidavit in the matter and therein, have contended that the appointment of the petitioner on compassionate ground being approved by the competent authority; there being no vacant post in the regular cadre being available, the petitioner, herein, came to be appointed as a Work-Charged Section Assistant in the establishment of respondent No. 4.

8. The learned standing counsel, Finance Department, has submitted that the regularization of the services of the petitioner, herein, would not be permissible in view of the directions passed by this Court in the case of ***Upen Das & 836 ors. v. State of Assam & ors.***, in ***Writ Appeal No. 45/2014***, vide judgment & order, dated 08.06.2017.

9. I have heard the learned counsels appearing for the parties and also perused the materials brought on record.

10. It is not disputed that the petitioner's initial entry into the service was on consideration of his case for appointment on compassionate ground. It is also seen that the appointment of the petitioner on compassionate ground was so approved by the competent authority of the Department.

11. The petitioner having been so appointed on consideration of his case under the scheme of compassionate appointment; it is not understood as to how the petitioner could have been appointed against a Work-Charged post and not in a regular sanctioned post. Even accepting the plea of the respondents, herein, that at the time of the initial entry into the service of the petitioner; there being no regular vacant post available for appointment of the petitioner under the compassionate appointment scheme, he was appointed against a Work-Charged post; the petitioner, herein, could not have been continued against the Work-Charged post, but, he ought to have been so regularized against a vacant sanctioned post.

12. It is to be noted here that the scheme of compassionate appointment as was prevalent at that relevant point of time, mandated the appointment

of a candidate under compassionate appointment against a regular vacant post and not on temporary and/or adhoc basis. In other words; such appointment must necessarily be so made against a regular sanctioned vacant post. However, since 1993, to be more specific, w.e.f. 29.06.1993, when the petitioner was so appointed; he was so continued against the Work-Charged post and it is not brought on record that no post had so arisen in the regular cadre in the establishment of respondent No. 4 for accommodation of the petitioner against the same.

13. In view of the above discussion; this Court is of the considered view that any appointment on compassionate ground has to be so made on regular basis. A claim for compassionate appointment can either be accepted or rejected as per law. However, once a claim for compassionate appointment is accepted; it has to be understood to be a regular appointment.

14. The petitioner, herein, was appointed under the died-in-harness scheme in the year 1993 to the post of Section Assistant against a Work-Charged post in the establishment of respondent No. 4. This Court does not find any reason why a person appointed under the died-in-harness scheme should be kept on temporary basis for such a long period of time, more so, when the scheme does not contemplate appointment on temporary basis.

15. Accordingly, in view of the above conclusions; the respondent authorities are hereby directed to accommodate the services of the petitioner, herein, against a regular sanctioned vacant post of Section Assistant in the establishment of respondent No. 4 and thereafter, reckon

the service rendered by the petitioner w.e.f. 29.06.1993, to be an appointment against a regular vacant post of Section Assistant; proceed to fix the pay and allowances of the petitioner on his appointment against a regular sanctioned vacant post and consider the petitioner, herein, to be an appointee of the year 1993 and accordingly; further determine his other service benefits including the pension and pensionary benefits accordingly.

16. The exercise as now required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and concluded within a period of 2(two) months from the date of receipt of a certified copy of this order.

17. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant